

SAN ANTONIO INTERNATIONAL AIRPORT LEASE

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This San Antonio International Airport Lease (hereinafter "Lease") is entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting by and through its City Manager, pursuant to Ordinance No. _____, adopted on _____, 2006 ("Lessor") and **TEXAS SUPERMOTO, L.L.C.**, A Texas limited liability company, duly authorized to do business in Texas, (hereinafter "Lessee"), acting by its authorized officer pursuant to its articles of organization and bylaws, **WITNESSETH:**

WHEREAS, Lessee has requested that it be permitted to lease certain unimproved ground space located at the San Antonio International Airport and be allowed to construct improvements thereupon; and

WHEREAS, Lessee intends to construct additional hangars for itself and to sublease for private aircraft owners; and

WHEREAS, it is in the best interests of the City to enter into a Lease Agreement in order to effectuate the agreement of the parties as to these matters; **NOW THEREFORE:**

Lessor and Lessee for and in consideration of the mutual covenants and promises herein expressed do hereby agree as follows:

I. DESCRIPTION OF LEASED PREMISES

1.1 Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, does hereby lease unto Lessee, and Lessee does hereby accept from Lessor, approximately 315,374.40 Square Feet (7.24 Acres) of Ground Space, consisting of the following described Tract (referred to as "Leased Premises"):

1.1.1 Tract A: Approximately 315,374.40 Square Feet (7.24 Acres) of land, more or less, at the San Antonio International Airport, San Antonio, Bexar County, Texas, the location of said 7.24 Acres being specifically designated as such on the table top plans attached hereto as **Exhibit 2**. ("Tract A").

1.1.2 Survey of Premises. The parties hereto agree that prior to the commencement of rental payments for Tract A, a survey of the Leased Premises will be performed, at Lessee's expense, and if such survey should identify any discrepancies in the square footage of the Leased Premises from those set forth in Article 1.1, then the corrected square footage shall be automatically substituted herein, subject to applicable rental rates and to all other terms and conditions herein contained. In such event, a copy of such survey shall be provided to Lessor, reflecting the corrected square footage and any revisions to this Lease necessitated thereby, and a writing signed by both Parties shall be filed of record with the City Clerk and shall automatically become a part of this Lease on such date as shall be specified in said writing.

II. RENTAL

2.1 Lessee agrees to pay Lessor as rental as indicated on the table below, monthly in advance (without notice or demand, both of which are expressly waived) for the use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided.

<u>Leased Premises</u>	<u>Total Sq. Footage</u>	<u>Annual Rate Per Sq. Ft.</u>	<u>Annual Rental</u>	<u>Monthly Rental</u>
<u>Tract A:</u>	315,374.40	\$0.35	\$110,381.04	\$9,198.42
Totals	315,374.40		\$110,381.04	\$9,198.42

2.2 All rentals shall be calculated on an annual basis and shall be paid by Lessee to Lessor in advance without invoicing, notice or demand, in equal monthly installments on or before the first day of each calendar month beginning on the applicable Rent Commencement Date, as defined below, and continuing throughout the remainder of the term of this Lease Agreement and any extension(s) hereof.

2.2.1 Rent Commencement for Tract A. For purposes of Tract A, the "Rent Commencement Date" is defined as, *the later of* (i) the date that Lessee receives a Certificate of Occupancy for the improvements constructed on its Leased Premises or (ii) the date that the extension of Taxiway Romeo is certified by the General Contractor to be complete and ready for operation, such that Lessee's aircraft are able to safely use Taxiway Romeo to access Lessor's runways from the Leased Premises. Notwithstanding the foregoing, if Taxiway Romeo is complete and ready for operation, and the improvements are not completed and a Certificate of Occupancy issued within the 18th month time period established for completion of construction in Standard Provision 5.1, the Rent Commencement Date for Tract A will be the expiration date of such 18th month period. In the event that the applicable Rent Commencement Date shall fall on a day other than the first day of any calendar month, or the Lease Term shall expire on a day other than the last day of a calendar month, then, and in such event, rental installments will be prorated for the first or last month as the case may be.

2.3 All rentals and payments that become due and payable by the Lessee shall be made to the City of San Antonio, Office of the Aviation Director, San Antonio International Airport, 9800 Airport Blvd., San Antonio, Bexar County, Texas, unless otherwise notified in writing. All rentals and payments unpaid for ten (10) days after the date due shall bear interest at the rate of ten (10) percent per annum from that date.

2.4 Such rentals shall be subject to the adjustments in rental rates contained in Standard Provision 1 hereof.

III. ECONOMIC DEVELOPMENT PROGRAM INCENTIVES AND CONTRACTUAL GROUND RENTAL ABATEMENTS

3.1 Economic Development Program Incentives. In accordance with the approved Airport Economic Development Program set out in Ordinance No. 74982, dated December 19, 1991, Lessee shall also be entitled to rent abatement subject to Lessee's compliance with the following procedure:

3.1.2 Upon Lessee's completion of the capital improvements to the Leased Premises (the "Leased Premises Improvements"), Lessee shall submit to the Aviation Director (hereinafter called the "Director") the following:

a. Itemized contractor's invoices detailing the costs incurred by Lessee for the Leased Premises Improvements. Such costs shall represent the total expenditure for the Leased Premises Improvements incurred by Lessee, provided that costs to be abated as hereinafter provided for in-house architectural, engineering and construction management do not exceed eight percent (8%) of the total cost and further provided that such costs do not include any finance or interest expense and/or separate overhead costs of Lessee.

b. A certified statement from Lessee's contractors specifying the total costs incurred, and stating that all applicable work was performed in accordance with the approved plans and specifications and in strict compliance with all applicable building codes, laws, rules, ordinances and regulations.

3.1.3 On the first day of the month following receipt and approval by the Director of the foregoing described cost information and certifications, documenting the required expenditure, the market rent for the Leased Premises, as set out in Article II. RENTAL. (\$0.35 per square foot) shall be decreased in accordance with Ordinance No. 74982 by thirty percent (30%), as indicated in the Table below, and will continue at this reduced rate for six (6) years from that date.

<u>Leased Premises</u>	<u>Total Sq. Footage</u>	<u>Annual Rate Per Sq. Ft.</u>	<u>Annual Rental</u>	<u>Monthly Rental</u>
<u>Tract A</u>	315,374.40	\$0.245	\$77,266.73	\$6,438.89

3.1.4 Upon completion of the capital improvements, a copy of the "as built drawings shall be provided to Lessor.

IV. USE OF LEASED PREMISES

4.1 Lessee shall use the Leased Premises solely for (i) the operation, maintenance, and storage of non-commercial aircraft including the repair, overhauling, rebuilding, and modification thereof, (ii) the operation of Wright Flyers Aviation, Inc. pilot instruction and training and aircraft rental, (iii) On-demand operations as described under 14CFR part 135(iv) activities related to constructing improvements thereon, whether for the benefit of Lessor or Lessee, and (v) such other corporate aviation related purposes as may be approved in writing by the Director, such approval not to be unreasonably withheld, conditioned, or delayed.

V. LEASE TERM

5.1 The term of this Lease Agreement shall be twenty-five (25) years, and shall commence on the first day of the month following the passage by the City Council of the ordinance authorizing the execution of this Lease Agreement ("Commencement Date") and shall terminate (unless earlier terminated in accordance with this Lease) at midnight of the last day of the twenty-five (25) year term. The Lease term will at all times be subject to the provisions for recapture and/or early termination herein contained.

VI. INDEMNIFICATION

6.1 **LESSEE** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY OF SAN ANTONIO ("CITY")** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings,

actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LESSEE's** activities under this **LEASE**, including any acts or omissions of **LESSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LESSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **LEASE**, all without however, the City waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS LEASE.** The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LESSEE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **LESSEE** known to **LESSEE** related to or arising out of **LESSEE's** activities under this **LEASE** and shall see to the investigation and defense of such claim or demand at **LESSEE's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LESSEE** of any of its obligations under this paragraph.

6.2 It is the **EXPRESS INTENT** of the parties to this **LEASE**, that the **INDEMNITY** provided for in this Section 6, is an **INDEMNITY** extended by **LESSEE** to **INDEMNIFY, PROTECT and HOLD HARMLESS**, the **CITY** from the consequences of the **CITY's OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this Section **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **LESSEE** further **AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

VII. INSURANCE

7.1 Prior to occupancy of the Leased Premises and the conduct of any business thereupon, Lessee shall furnish original Certificates of Insurance to Lessor, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Lessor shall have no duty to perform under this Lease Agreement until such certificates shall have been delivered to the Lessor, and no officer or employee shall have authority to waive this requirement.

7.2 Lessor reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the Lessor's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will Lessor allow modification whereupon Lessor may incur increased risk.

7.3 Lessee's financial integrity is of interest to Lessor, therefore, subject to Lessee's right to maintain reasonable deductibles in such amounts as are approved by Lessor (which approval will not be unreasonably withheld), Lessee shall obtain and maintain in full force and effect for

the duration of the Lease Agreement, and any extension hereof, at Lessee's sole expense, insurance coverage written by companies authorized and admitted to do business in the State of Texas and rated B or better by A.M. Best Company and/or otherwise acceptable to Lessor, in the following types and amounts:

<u>Type</u>	<u>Amount</u>
(1) Worker's Compensation & Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
(2) Commercial General Liability Aviation Policy to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000.00 per occurrence or its equivalent with an aggregate of not less than \$5,000,000.00
(A) Premise/Operations	
* (B) Independent Contractors	
* (C) Personal Injury	
(D) Contractual Liability	
(E) Broad Form Property Damage to include Fire and Legal Liability	
(F) Products/Completed Operations	
(3) Property Insurance for physical damage to the Lessee's improvements and betterments to the leased Property	Replacement Cost coverage or eighty percent (80%) of actual cash value Coverage
(4) Automobile Liability (any auto)	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000.00 per occurrence or its equivalent.
*(5) Plate Glass Coverage for Leased Premises	Replacement Cost Insurance Coverage
*(6) Above Ground and/or Underground Storage Tank Storage Tank Liability	\$10,000,000.00 per claim
*(7) Aircraft Liability	\$10,000,000.00 per occurrence, Combined single limit, written on an occurrence form
* If applicable	

7.4 Lessor shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by Lessor, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by Lessor, the Lessee shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

7.5 Lessee agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name Lessor and its officers, employees, agents and elected representatives as additional insureds (as the interest of each insured may appear), as to all applicable coverage, with the exception of the worker's compensation and employer's liability policy;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where Lessor is an additional insured shown on the policy;
- Worker's compensation and employer's liability policy will provide a waiver of subrogation in favor of Lessor.

7.6 Lessee shall notify Lessor in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the Lessor by Certified Mail at the following addresses:

Aviation Director
CITY OF SAN ANTONIO
9800 Airport Blvd.
San Antonio, Texas 78216-9990

7.7 The proceeds for any such insurance, paid on account of fire, explosion or other damage shall be used to defray the cost of repairing, restoring or reconstructing said improvements, as necessary.

7.8 It is expressly understood and agreed that all operations of Lessee under this Lease Agreement between Lessor and Lessee shall be covered by such policies of insurance or self insurance as approved by Lessor's Risk Manager and that all personal property placed in the Leased Premises shall be at the sole risk of Lessee. The procuring of policies of insurance shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of this Lease. Lessee's obligation is, notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the Airport and covered by the indemnification provisions of this Lease.

VIII. PERFORMANCE GUARANTEE

8.1 Lessee shall deliver to the Director, on or before the Rent Commencement Date of this Lease, and shall keep in force throughout the term hereof, either an irrevocable letter of credit in favor of Lessor, drawn upon a bank satisfactory to Lessor, or a surety bond, payable to Lessor. (the "Performance Guaranty") The foregoing shall be in a form and content satisfactory to Lessor, shall be conditioned upon satisfactory performance of all terms, conditions and covenants contained herein during the term hereof and shall stand as security for payment by Lessee of all valid claims by Lessor hereunder. If a bond shall be delivered, it shall be issued by a sound indemnity company, authorized to do business in Texas. The amount of the irrevocable letter of credit or surety bond shall be **Thirty eight thousand six hundred and thirty three AND 00/100 DOLLARS (\$38,633.00)**. Said amount shall be adjusted, as necessary, so that it shall at all times equal at least one-half (1/2) of the total annual rental payable by Lessee to Lessor hereunder.

IX. STANDARD PROVISIONS AND COVENANTS

9.1 Except as amended below, the Standard Provisions and Covenants (Rev. 6/12/06 whd), attached hereto as **Exhibit 1**, (the "Standard Provisions") are incorporated herein and made a part hereof for all purposes.

9.1.1 The term "primary term" shall in all instances refer to the 25 year lease term provided for in this Lease Agreement.

9.1.2 The first sentence of Standard Provision 9.6 is amended to read as follows: In addition to any other rights of access herein regarding the Leased Premises, Lessor shall, upon reasonable notice, have access thereto at any reasonable time in order to inspect and confirm that the Lessee is using same in accordance with all applicable environmental laws and regulations.

9.1.3 Standard Provision 19.2 is amended to read as follows: Lessee shall not sublet the Leased Premises or any part thereof without having first obtained the Aviation Director's written consent, which consent will not be unreasonably withheld or delayed. In the event Lessee requests permission to sublease, the request shall be submitted to the said Director, prior to the effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreements and of all agreements collateral thereto. The identity of the sublessee, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history and all other information requested by said Director shall be specified. Lessee shall not sublease a total of more than fifty percent (50%) of the Leased Premises. If such limit is exceeded, Lessor shall have the right, upon thirty (30) days' written notice, to recapture the space described in the sublease, and terminate the entire Lease Agreement on the expiration of such thirty (30) day period. In the event of any recapture, Lessee's rental payments shall be adjusted on a pro-rata basis; provided, however, that all options of Lessor contained in Provision 17 shall be available to Lessor.

X. SPECIAL PROVISIONS

10.1 "As Is" Acceptance. Lessee understands, recognizes and agrees that Lessee takes the Leased Premises on an "As Is" basis, subject to the express provisions of this Lease, including Lessor's obligations under Sections 3.1 and 10.4 of this Lease. Further, except for the infrastructure improvements described in Section 3.1 above, Lessor is not responsible for any improvements on the Leased Premises, and Lessor does not warrant any of the ground, buildings, concrete, asphalt, or any other pavement thereupon.

10.2. Certificates of Occupancy. It is the express agreement of the parties that Lessee at Lessee's sole cost and expense will obtain and deliver to the Director any required Certificates of Occupancy for the Leased Premises prior to occupancy of the building to be constructed on the Leased Premises and any required building permits prior to any construction unless otherwise agreed to in writing by the Director.

10.3 Lessee may install its own on-site above-ground fuel storage tanks on the Leased Premises for use in connection with Lessee's aircraft at the Leased Premises, and Lessee and its third-party carriers shall have access to and from the Leased Premises for purposes of delivering such fuel. Lessee agrees to comply with all applicable Airport Rules and Regulations related to Fueling and Flammables, which are set forth in the San Antonio City Code, Chapter 3, Article II, Sections 3.12 et seq., as well as all applicable local, state and Federal laws related to fuel and flammables storage and distribution. Lessee shall be subject to Provision 2 of the Standard Provisions, regarding payment of fuel flowage fees.

10.4 Lessor shall relocate the current perimeter road located along the Airport property line to the most northwestern corner of the Leased Premises and extend all utilities to the Leased Premises. Lessor agrees that, at all times during any such construction work, Lessee's access, use and enjoyment of the Leased Premises shall not be impeded or disrupted and Lessee shall continue to have adequate and safe access to the Leased Premises for the uses allowed under this Lease Agreement. All construction work related to the perimeter road improvements, to the extent required to allow Lessee to fence off the Leased Premises and provide its own entrance

to the Leased Premises off of perimeter road, shall be completed by Lessor by no later than the date that Lessee has completed its site grading at the Leased Premises.

10.5 Lessor shall complete the extension of Taxiway Romeo to the two gates identified on the survey attached as Exhibit 2 no later than October 1, 2008.

10.6 Hangar, Roadway, and Utility Construction.

10.6.1 Subject to the terms set forth herein, Lessee shall perform at Lessee's sole cost, risk and expense the new hangar construction. Such construction shall be completed by Lessee in accordance with plans and specifications to be developed by Lessee's consulting Architect/Engineer and approved by the Director, which approval will not be unreasonably withheld or delayed. In addition to Lessee's submissions of plans and specifications, Lessee shall submit to the Director the estimate of the cost of construction by the consulting Architect/Engineer.

10.6.2 Lessee shall cause its consulting Architect/Engineer to prepare and submit plans for a Building Permit to the City of San Antonio no later than ninety (90) days after the Effective Date. Upon issuance of a Building Permit, Lessee shall thereafter continuously and in good faith pursue construction of the new hangars to completion.

10.6.3 If the relocation of the current perimeter road located along the Airport property line and extension of all utilities to the Leased Premises has not been completed by the time Lessee's general contractor will be mobilized at the Leased Premises to begin construction of the improvements thereon, then Lessee may, at Lessee's sole cost, risk and expense, relocate the perimeter roadway and extend all necessary utilities to the Leased Premises. The relocation of the perimeter roadway and extension of utilities, including without limitation, telephone and internet cables, electrical power, gas pipelines, sanitary sewerlines and waterlines, and their associated infrastructure, will be completed in accordance with plans and specifications to be developed and/or coordinated through Lessee's consulting Architect/Engineer and approved by the Director and by agencies having jurisdiction regarding this issue in accordance with Standard Provision 5. Lessee's approved rental credit, as below described, shall be limited to the amount approved by Lessor based upon the Lessor's review of the consulting Architect's/Engineer's estimate of the cost of construction. However, the maximum approved rental credit for such construction by Lessee, as approved by Lessor, based upon Lessor's review of the consulting Architect's/Engineer's estimate of the cost of construction may be subject to a reasonable adjustment provided Lessee and Lessor acting by and through the Director can agree upon the amount and justification for such adjustment.

10.6.4 Upon completion of known (and unknown) roadway and utility infrastructure extension project(s), approved in advance by the Director, in accordance with the above set forth terms and conditions, Lessee shall submit to the Director itemized contractor's invoices detailing the costs incurred by Lessee therefore. The itemized contractor's invoices shall at a minimum include an itemized list of construction materials used, the itemized cost of such construction materials, and itemized labor costs, including but not limited to, quantity, unit cost, amounts, and copies of invoices from suppliers. Such costs shall represent the total expenditure therefore by Lessee, provided, however that costs to be abated, subject to a rent credit, as hereinafter provided for architectural, engineering and construction management do not exceed eight percent (8%) of the total cost and further provided that such costs do not include any finance or interest expense and/or separate overhead costs of Lessee. Further, upon completion of such known and unknown utility infrastructure improvement project(s), Lessee shall provide to the Director a certified statement from its contractors specifying the total costs incurred and a certificate from said contractors that all applicable work for the known and unknown utility infrastructure improvement project(s) was performed in accordance with the

approved plans and specifications. Upon receipt by the Director of the foregoing described cost information and certifications, Lessee shall receive a rent credit for all approved costs of the known and unknown utility infrastructure improvement project(s). Upon Lessor's receipt of Lessee's notice and Lessor's verification that the events described above have occurred, Lessee shall receive credit for all approved costs for the roadway relocation and extension of utilities against rent payments due to Lessor under this Lease Agreement and the rent payments payable by Lessee shall be abated until such time as such approved costs shall have been offset in full. This rental abatement shall be in addition to other partial ground rental abatements then in effect under this Lease Agreement.

10.7 Each party hereby represents and warrants to the other party that it has not incurred or authorized any brokerage commission, finder's fees or similar payments in connection with this Lease Agreement. Each party hereby releases the other from any claim for brokerage commission, finder's fees or similar payment arising by virtue of authorization by, through, or under such party in connection with this Lease Agreement.

EXECUTED THIS THE ___ day of _____ 2007.

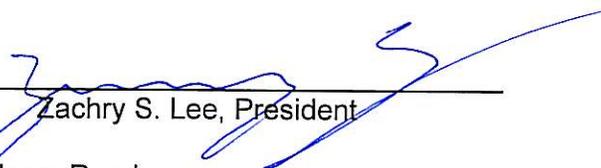
ATTEST:

City Of San Antonio, Lessor

By: _____
Sheryl Sculley, City Manager

ATTEST:

TEXAS SUPERMOTO, L.L.C., LESSEE

By:  _____
Zachry S. Lee, President

APPROVED:

970 Isom Road
San Antonio, Texas 78216

City Attorney

26-0252282
Federal Tax I.D. Number